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Official Report of Debates (Hansard)

Tuesday 2 December 1997
Tuesday 9 December 1997

Standing committee on
administration of justice

Election of Chair
Appointment of subcommittee

Consumer Protection
Amendment Act, 1996

Chair: Jerry J. Ouellette
Clerk: Douglas Arnott

Assemblée législative de l'Ontario

Première session, 36^e législature

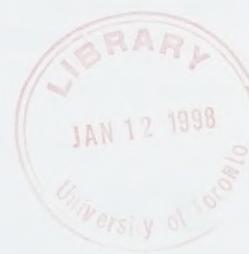
Journal des débats (Hansard)

Mardi 2 décembre 1997
Mardi 9 décembre 1997

Comité permanent de
l'administration de la justice

Élection du Président
Nomination des membres
du sous-comité

Loi de 1996 modifiant la Loi
sur la protection du consommateur



Président : Jerry J. Ouellette
Greffier : Douglas Arnott

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Tuesday 2 December 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mardi 2 décembre 1997

The committee met at 1532 in room 228.

ELECTION OF CHAIR

Clerk of the Committee (Mr Douglas Arnott): Honourable members, it is my duty to call upon you to elect a Chair of the committee. Are there any nominations?

Mr R. Gary Stewart (Peterborough): It's my pleasure to nominate Mr Jerry Ouellette as Chair of the justice committee.

Clerk of the Committee: Are there any further nominations?

Mr Peter Kormos (Welland-Thorold): I'd like to nominate Toni Skarica, please.

Clerk of the Committee: Mr Skarica is not a member of this committee.

Mr Kormos: My apologies. I'd like to nominate Gary Carr.

Clerk of the Committee: Mr Carr is not a member of this committee.

Mr Kormos: Unfortunate.

Clerk of the Committee: Are there any further nominations? There being no further nominations, I declare Mr Ouellette elected Chair of the committee.

The Chair (Mr Jerry J. Ouellette): Thank you very much. I'd just like to say that I'll endeavour to be as fair as possible and reasonable on all issues and I look forward to working with all the members of the committee.

Mr E.J. Douglas Rollins (Quinte): Oh no.

The Chair: Oh yes, Mr Rollins, I shall be, and if past performance is a future dictator, I think with the experience I had in resources, it would be expected that individuals can see that I would be fair.

Mr David Ramsay (Timiskaming): We'll still go to the north to travel, though?

The Chair: I certainly hope so. I'm looking forward to it.

We'll move on to the next business of the committee, a motion.

APPOINTMENT OF SUBCOMMITTEE

Mr Bob Wood (London South): I move that a subcommittee on committee business be appointed to meet

from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting; that the subcommittee be composed of the following members: the Chair of the committee as Chair, Mr Martiniuk, Mr Ramsay and Mr Kormos; and that substitution be permitted on the subcommittee.

The Chair: Further discussion? All those in favour? Carried.

New business?

Mr Ramsay: There are a couple of private members' bills that have been referred to this committee. I was wondering if we could start to discuss or set a date for a subcommittee meeting when these could be discussed so that we could plan our business of this committee. Bill 111 is one of them, I believe, and Bill 83 is another one that has been referred to this committee for second reading consideration.

The Chair: I believe it would be appropriate to have the subcommittee meet after this meeting if there's agreement within the subcommittee.

Mr Ramsay: Fine.

The Chair: We will. Any further new business that needs to be discussed at this time?

Mr Bruce Crozier (Essex South): Chair, I think we shouldn't go without recognizing, albeit I haven't been on this committee all that long, but Mr Martiniuk, who has retired, I think for the most part, although not entirely, served well as the Chair. If you were to be as fair in most instances as he was, we would appreciate that. We wish Mr Martiniuk well.

Mr Ramsay: I second that, Mr Chair.

The Chair: I shall endeavour to fill the chair.

Mr Kormos: And so even-tempered.

Mr Rollins: Mad all the time.

The Chair: No further new business at this time? We'll conclude this meeting until the notice of the Chair.

The committee adjourned at 1536.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Chair / Président

Mr Jerry J. Ouellette (Oshawa PC)

Vice-Chair / Vice-Président

Mr E.J. Douglas Rollins (Quinte PC)

Mr Dave Boushy (Sarnia PC)

Mr Bruce Crozier (Essex South / -Sud L)

Mr Peter Kormos (Welland-Thorold ND)

Mr Gerry Martiniuk (Cambridge PC)

Mr Jerry J. Ouellette (Oshawa PC)

Mr David Ramsay (Timiskaming L)

Mr Douglas E.J. Rollins (Quinte PC)

Mr R. Gary Stewart (Peterborough PC)

Mr Bob Wood (London South / -Sud PC)

Clerk / Greffier

Mr Douglas Arnott

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Tuesday 9 December 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mardi 9 décembre 1997

*The committee met at 1533 in room 228.*CONSUMER PROTECTION
AMENDMENT ACT, 1996LOI DE 1996 MODIFIANT LA LOI
SUR LA PROTECTION DU
CONSOMMATEUR

Consideration of Bill 83, An Act to amend the Consumer Protection Act / Projet de loi 83, Loi modifiant la Loi sur la protection du consommateur.

The Chair (Mr Jerry Ouellette): I bring this committee to order. Thank you, everyone, for attending. The first order of business is to accept a motion to accept the minutes of the subcommittee.

Mr Gerry Martiniuk (Cambridge): So moved.

The Chair: So moved. Discussion on the subcommittee report? No? We'll move to a vote. All those in favour of accepting the subcommittee report? Carried.

CONSUMERS' ASSOCIATION
OF CANADA (ONTARIO)

The Chair: We'll move directly to our presenters now. If you could state your name and the organization you are with for Hansard, we would really appreciate it. As well, you have 20 minutes for your presentation. At the end of your presentation, any time you have remaining is divided equally between the three caucuses. Go ahead, please.

Mrs Helen Anderson: My name is Helen Anderson. I'm president of the Ontario branch of the Consumers' Association of Canada. I'd like to thank you for this opportunity to express the views of the Ontario branch of the Consumers' Association of Canada.

Our association is a national association of volunteers dedicated to bringing the interests and concerns of consumers to the attention of government and industry. CAC is a vital communications link between consumers and other stakeholders on all marketplace issues.

You may not have heard a lot from CAC (Ontario) over the last three or four years, because this association had to fold due to lack of funds. We obtain our funding mainly from our own members, who all used to be subscribers to our magazine, Canadian Consumer. Unfortunately, due to various misfortunes, the magazine folded several years ago, leaving us without a vehicle to keep our existing

members and attract new ones. Also, both the federal and the Ontario provincial governments first reduced their support and then terminated it altogether. This left us with no moneys to afford an office, staff, telephone, computer and so on. The existing executive then resigned, leaving the association in limbo. There we remained until just over a year ago, when the committee chairs, who had all been working diligently in their own fields, got together to reform the association. We subsequently elected a president, moi, and an executive and have been exploring ways of finding new members and setting up a business plan for our activities. In the meantime, the national association has been helping us, and we hope eventually to have sufficient funds to afford an office with a manned telephone to be available to the public once more.

That said, we are still working on behalf of consumers, all the committee chairs are still continuing with what they were doing before and we are pleased to be able to present the consumer point of view in relation to Mr Crozier's bill on negative option marketing.

CAC has long been opposed to this kind of marketing, and we applaud your efforts to amend the Consumer Protection Act in this way. We are also supporting, at the federal level, a private member's bill, C-288, which aims to prohibit negative option marketing in the supply of cable television services.

CAC's position is based on the consumer's right to be informed about the goods and services being offered and the right to choose among them. Negative option marketing, where a consumer must tell the supplier she does not wish to continue to receive an unsolicited good or service, does not respect these rights.

In the summer of 1997, CAC sent a questionnaire on consumer issues to more than 8,600 Canadians, of whom more than 1,000 replied. One of the questions asked how people wanted to learn about and choose financial or communication services. Almost half, or 49%, preferred an information brochure describing new services so they could request any they wanted. Only 1% said they preferred a free trial, after which they would be automatically billed unless they told the company to stop the service. These results tell us that Canadians clearly object to negative option marketing.

Negative option marketing potentially penalizes those consumers who do not have English as their mother tongue, and it may penalize those consumers who have difficulty understanding the implications of an offer and

will not know how to cancel the purchase or those who delay responding to a time limit because of poor hearing, illness, being away on vacation or, like me perhaps, putting a piece of paper down and half an hour later it's gone, I've lost it; I find it the next day somewhere else. Consumers should pay only for those goods or services which they specifically order. That's the rule of the day.

We urge all members of the Ontario Legislature to recognize the importance of this issue to Canadians and demonstrate leadership by making every effort to pass this consumer protection measure in the current sitting. Thank you very much.

1540

The Chair: Thank you very much. You allow us just under five minutes for each caucus. We begin with the official opposition.

Mr Bruce Crozier (Essex South): Good afternoon, Mrs Anderson, and thank you for your presentation. I appreciate that your association is working under some difficulty, as is often the case with funding. I'd like your opinion in the area of choice. One of the reasons I have asked for this amendment to the Consumer Protection Act is because, in my view, many consumers merely want the right to choose. Can you, in your experience with the association, make any comment on that?

Mrs Anderson: That is one of the things we believe in. We have a list of four consumer rights, and the right to choose is one of the basic rights that we delineated many years ago.

Mr Crozier: Have you been involved with the CAC for a long period of time?

Mrs Anderson: I joined it in 1958. I hate to tell you how old that makes me.

Mr Crozier: I'm one of the last ones who wants to get into age here today, so I appreciate that. In those almost 40 years, I would assume that it was formed because of a need, and you saw that need. Was negative option marketing an issue 40 years ago, 20 years ago, or is it a recent phenomenon?

Mrs Anderson: If you count Reader's Digest and Columbia Records as negative option marketing, yes, that would have been a long time ago, long before I joined Consumers' Association. But I understand that the rules are quite specific on the books and records and so on that those two companies offer, so that isn't really a problem; it may have been a problem before.

I remember having to send books back when we were living in a little gold-mining community and there wasn't a post office, which meant travelling to Val d'Or some 18 miles away to get to a post office and packaging them up and affording the postage. It was a great nuisance. It may have been that I just neglected to read the form that said I could not accept them if I didn't want them. But that was a negative option.

Mr Crozier: At that time.

Mrs Anderson: At that time.

Mr Crozier: Certainly the act, as it now stands, covers unsolicited credit. It covers unsolicited goods, which books would fall into. It has been my understanding in

researching this subject that as the service industry has grown, so has the concern in the service area over negative option marketing.

Mrs Anderson: That's right.

Mr Crozier: It may be that the experience of it is more recent, but it still causes the same concerns as you have dealt with in various other areas over that period of 40 years, I assume.

Mrs Anderson: There's a new one — I don't know whether you know about it — the gas brokers. Consumers' Gas or Union Gas, for instance, is your supplier of gas, but brokers have come into the picture right now, and they go to you and try to talk you into taking gas from them. They tell you that it's a bargain, that you're going to get a savings. One of the tricks is that unless you know exactly how much you pay for gas today and you've got your gas bill where you can reach it quickly, you don't know how much you pay and you don't know whether the price they're asking is higher or lower. You just think, "Okay, they say it's a savings; it's probably a good thing." But one of the things they ask you to do is to sign up for five years, and really nobody can tell what the price of gas is going to be five years from now. It may be a lot lower; it may be a lot higher. I guess you're throwing the risk on to the brokers.

Mr Crozier: That certainly is a problem in the area of gas, because it's becoming unregulated, although in some instances they do solicit the agreement of the customer and in fact are supposed to get a signature. Since you brought that up, I have constituents who have maintained that they didn't sign for that option to have an unregulated broker handle their gas supply, and in fact it has been difficult in a couple of instances for the broker to provide an agreement that has been signed, albeit someone signed it and sent it in. But we have had a couple of instances where it wasn't signed by the individual. That would be a little different than this, but I agree that is a current problem we have. I appreciate your appearing today.

Mr Peter Kormos (Welland-Thorold): Thank you, Mrs Anderson. I did know that you were involved in the Consumers' Association of Canada since 1958, but I also know that you were a member of the youth wing at the time.

Mrs Anderson: How kind of you.

Mr Kormos: Obviously, the New Democrats support this legislation, and I don't think it's any secret that the fiasco the cable TV operators generated with their scam gave rise to an awareness or a consciousness of this. Unfortunately, as you note by your reference to C-288, that's federal jurisdiction.

Banks are another set of culprits when it comes to this whole process. In the old days, the bad guys used to rob banks; now they own them — the whole manner in which banks can empty bank accounts in relatively short order by nickel-and-diming them with service charges etc. The solution to that of course is to just abandon the banks and join credit unions, which I encourage people to do, of course.

Mrs Anderson: Or a trust company.

Mr Kormos: Well, a credit union. I'm big on those; you know that.

You talk about the book club phenomenon in the bill, and Mr Crozier may be of some assistance. I'm looking at paragraph (b) of subsection 1(1), where you can enter into an agreement with, let's say, a mail-order book company such that you're agreeing that there will be volumes sent to you periodically, and I suppose that's fair enough as long as everything is above board and open.

On the gas issue, we've had a whole pile of complaints down in the Niagara region; again, unfortunately, a lot of elderly folks. Some of these brokers are describing themselves as "sister companies," which I suppose isn't an inaccurate term, being a sister company of Consumers' Gas. They're part of the gas provision family, and it's small-s, there's nothing formal about it. These sorts of scams are pretty reprehensible.

You were asked specifically about some of the stuff back in days gone by. I suspect that the effect of this bill is going to be more preventive, because it can't deal with cable TV, unfortunately; it can't deal with the rogue, scoundrel banks who have been nickel-and-diming people to death for months and years now. But I suppose it will prevent those creative, or seemingly creative, operators from entering the whole area of negative optioning.

Mrs Anderson: Let's hope so.

Mr Kormos: Now, you talked about the problems CAC has had, and I think everybody who reads the papers is aware of those. It has been proposed, especially in the area of utilities, that there be a modest surcharge attached to every utility bill to fund consumer advocacy at the regulatory level, because — and we've talked about this in a pile of contexts; auto insurance for years, among others — what good does it do to have a regulatory body at which consumers can make presentations if they're up against high-priced legal help and accountants and the consumers' advocates are there empty-handed?

Mrs Anderson: That's right. You've hit the nail right on the head. Our Peter Dyne — I mentioned to Mr Crozier that he's our energy chair in Kingston — has mentioned the same thing to Mr Wilson and various other members. He says that what he's up against, as a volunteer, is the cost of coming to Toronto. It's a \$60 train ticket, for example, and sometimes an overnight stay. He's up against people who are expert witnesses funded by the enormous electricity and nuclear energy people, and he can't cope with their presentations. His is a two-page letter that he has written himself; it's very well done, but still he's only one small individual against a massive bureaucracy. We are in trouble.

Mr Kormos: Even with respect to cable television, they've already picked my pockets clean. It's incredible. It started out to be the cheap option, and all of a sudden you're hooked in. You don't buy the tower and the rotating antenna any more, and you're hooked because they no longer do broadcasting. It's all these cable-only types of programming; it's not really broadcasting any more. I suppose for me an extra quarter a month, in view of the exorbitant fees that cable gouges me and other folks

— if that quarter a month was going to pay for representation at regulatory hearings, I think a whole lot of Ontarians would agree with it.

1550

Mrs Anderson: Yes, I should say. It would be absolutely fabulous.

Mrs Lillian Ross (Hamilton West): Ms Anderson, welcome to the committee. Thanks very much for your presentation.

Mr Crozier's bill has been discussed with the ministry, and the ministry is pretty much in favour of the intent and the spirit of the bill. You obviously believe that consumers should receive protection across this province. I wonder what you think particularly about this bill enhancing consumer protection. Do you think there are things in this bill that haven't been addressed and that could be addressed?

Mrs Anderson: I'm sorry, I missed that.

Mrs Ross: Do you think there are areas in this bill that have not been addressed but could be addressed? Do you think there's anything missing?

Mrs Anderson: There is one, and it's so small I almost hate to bring it up. We were discussing this at the association, and we talked about Rehandart; you know, those cards you receive from the people who are painting without the use of their hands. You can't help but feel sorry for them and you can't help but feel as if they're doing marvellous work to support themselves, but it's the guilt they lay on you, because they say: "You don't have to buy these cards. You can throw them away, give them away or return them, or whatever you want, but if you want to keep them we'd like you to send a cheque." Of course, you always do because you can't imagine being in the situation they're in.

Still, I wonder how many people do get the cards and think, "I didn't want these, I didn't order them, so why should I pay \$8" — or whatever it is; not a large sum. It's a guilt trip, really. Then if you don't pay, you get a little reminder, which sort of pricks your conscience again. It's a little sneaky. It isn't something to worry about, but it is an example of unsolicited goods.

Mrs Ross: You joined the Consumers' Association in 1958, I believe you said.

Mrs Anderson: That's right.

Mrs Ross: No doubt you've seen significant changes in how products are marketed to individuals.

Mrs Anderson: Absolutely, yes.

Mrs Ross: I'm talking about technology and how it has changed. We have a 24-hour home shopping channel, we have the Internet. All these kinds of things have changed the way people buy goods and services. Do you think we should be looking at how we can address the new technology through consumer protection?

Mrs Anderson: Absolutely, yes; I certainly do. Mind you, I don't watch the shopping channel myself, but I've heard that people do buy things on it and it is completely unregulated, is it not?

Mrs Ross: That's a good question. I don't have the response to that, but I believe that comes under the CRTC, which is federal.

Mrs Anderson: The Consumer Protection Act doesn't apply?

Mrs Ross: The Consumer Protection Act currently applies to goods. This bill adjusts that to services. But I'm saying that in the marketplace today, for example, you can purchase services through the Internet and in various other areas. I'm not sure about the home shopping channel, but I just use that as an example of how technology has changed and how people now buy goods and services. People are looking for faster, easier ways to purchase whatever the good or the service is. I'm just saying that technology has changed drastically how people purchase goods and services, so we need to look at consumer protection through those vehicles as well. Would you agree?

Mrs Anderson: Yes, you're right; definitely.

Mrs Ross: I think Mr Martiniuk had a question he wanted to ask.

Mr Martiniuk: Yes, thank you. I was just curious, because if I recall, your publication was at one time connected with the Consumers Union of the United States of America.

Mrs Anderson: Yes. It still is in a way, because they offered for several years that we could put in a little insert of material every three or four months, and that was their gift to us. I felt the material we put in was somehow pretty boring. I didn't know anybody who read it. I read it, but I didn't know why anyone would bother. They're not going to do that for us any more.

What they're doing now is really to support their own sales in Canada. They are going to put in the Canadian serial numbers of anything they test that's available in Canada. These are not necessarily made in Canada; they could be American goods coming across the line, but they are available to Canadians. You can at least go and find out the rating of the article that is in the store, made in the US, which is a little better than it was, but it doesn't help CAC; it helps Consumers Union.

However, we appreciate it because the editor is the fact editor of our magazine and their financial officer is the old testing member of our magazine. We have had some other smart companies come along and find them and offer them more money.

The Chair: Thank you very much for coming forward. We really appreciate you taking the time to come before the committee.

BETTER BUSINESS BUREAU OF METROPOLITAN TORONTO

The Chair: I would now ask representatives of the Better Business Bureau of Metropolitan Toronto to come forward. In case you did not hear or were not here earlier, you have 20 minutes for a presentation. At the end of your presentation, any time is divided equally between the three caucuses.

Mr Warren Wall: My name is Warren Wall. I'm the current chair of the Better Business Bureau of Metropolitan Toronto. I'm here today to speak on behalf of the

members of the Better Business Bureau in reference to the negative-option selling practices.

The Better Business Bureau is a not-for-profit organization that acts as a communication link between businesses and consumers. It is an organization of concerned businesses whose common aim is the preservation and growth of the free enterprise system with due regard to social responsibility.

At the Better Business Bureau, we promote and assist businesses in maintaining truth and accuracy in their advertising and in their business practices, which in turn increases public confidence in the marketplace. The bureau exposes instances of unethical or illegal trade practices and reports those findings to our consumers, as well as law enforcement agencies if necessary.

Although the Better Business Bureau strives for self-regulation in the marketplace, there are instances where the government can show leadership and take measures to curtail the practices of businesses which are not in the best interests of the consumers, and where national consistency of policy is desirable.

One such instance is the practice of negative option selling by corporations operating with the benefit of a monopoly in their particular market. Where the consumer lacks a choice in the product or service, the benefit of negative option selling usually rests solely with the seller. The advantage or benefit to the consumer is negligible or non-existent. On the other hand, if properly administered, the marketing practice can be beneficial and convenient and in fact is used successfully by a number of companies selling books, tapes, lawn care and other commodities such as memberships, investment certificates and even newspaper and magazine subscriptions.

Because negative option selling takes many forms, it is often used in conjunction with other marketing strategies. It can be difficult to define or immediately recognize. Although it generally deals with instances where some contractual relationship already exists, consumers' rights can be compromised, as was the case in the 1995 cable subscription offerings.

In that instance, subscribers who had an agreement in place to receive specific programming at a specified price were put in the position of having to pay a higher price in order to preserve the same channel selection. The missing component in this instance was consumer choice. The consumer did not have the benefit of obtaining an equal or competitive choice of service, because the buyer did not have an option other than to accept the terms imposed by the seller. There was a public outcry against this practice.

Under common law, it is generally accepted that one is not obligated to pay for unsolicited goods or services unless they are or were specifically ordered by the recipient. We believe that the order for the goods or services or the consent to receive the goods or services must be explicit, and cannot be inferred from acceptance or use of payment. Negative-option selling can allow companies to profit without the need to ensure that the consumers are fully aware of the changing terms.

1600

While there can be many advantages for consumers and business in negative option selling, there are a number of concerns. In the case where a monopoly exists, the benefit to consumers is questionable. The potential for abuse also exists. Businesses can slip in new charges or amend services past unwary or unsuspecting consumers. Clauses regarding the company's right to adjust prices in terms of service or goods can be extremely vague, resulting in consumers being taken advantage of, real or perceived. Regardless of the consumers' awareness level, they are accountable for their failure to take action.

In order to protect the rights of consumers and legitimate businesses, some forms of legislation would be desirable, specifically in terms of the use by companies who enjoy a monopoly, and general disclosure guidelines for use by all businesses.

The Chair: Thank you very much for your presentation. That allows us just under five minutes per caucus. We begin with the third party.

Mr Kormos: Thank you kindly. Has the Better Business Bureau dealt with concerns expressed about negative optioning?

Mr Wall: Only in respect to Canada, because the Better Business Bureau is a Canada-wide organization. We get complaints or inquiries from other offices and we have to look in that respect. But other than dealing with them, we advise them of their rights and what they can do about that.

Mr Kormos: I'm just wondering what, if anything, has been current in that area. When we were talking to Ms Anderson, we spoke about the same sort of thing. Appreciating that two of the more dramatic ones, banks and cable TV, are both federally controlled, I'm just wondering if issues have arisen here in Toronto, for instance, that deal with negative optioning or anything akin to it.

Mr Wall: It hasn't been a focus in the last little while, so I'm not quite sure, but I could get back to you on that.

Mr Kormos: Let me tell you, I subscribe to a series of Time Life Books or one of those series. I gave my credit number, so it was being knocked off my credit card every couple of months. I have no quarrel with that. All of a sudden, the books stop. I shrug, because at some point you're inundated. But then I get a dun letter from some collection agency that of course doesn't have a telephone number — but it does have a telephone number. I can't call anybody to tell them that they're a bunch of doughheads and that if they don't stop that I'm really going to be ticked off at them.

That is really frustrating, because they had my credit card number. Some of the worst offenders in the whole area of consumer protection are collection agencies. Don't you agree?

Mr Wall: I don't know if it's my position to comment on that.

Mr Kormos: I'd like to hear what you think.

Mr Wall: We do get a series of complaints or inquiries about collection companies. The way our business works, if we have a written complaint we will take it in writing

and then we'll try to get the complaint resolved. If not, then the company goes on to our bad list and we do refer that to our consumers who phone in for inquiry.

Mr Kormos: I trust you're supporting the legislation.

Mr Wall: Absolutely.

Mr Kormos: What about the policing, though? I tell you, I've had concerns about the government's effectiveness to police for a long time, about as long as I've been here, dating back to darned near 1987. What's your experience with the ability of the Ministry of Consumer and Commercial Relations to police and give effect to its legislation?

Mr Wall: In regard to policing, that's the mission of the bureau, to keep on file the companies that are not meeting correct and ethical business standards. I know in regard to the government organization they're hard to deal with, and that's why we're so successful and still getting a tremendous number of inquiries every day that we try to handle.

Mr Kormos: One of the dilemmas that consumers have — I come from down in Niagara region, a smaller town than Toronto. Consumers down there — and they're in my constituency office inevitably after the fact — like the idea of supporting small business people. When an asphalt layer screws up their driveway they have no problems. I've helped people do the Small Claims Court route. They get judgement. But when you've got really small business people, they're as often as not — what's the phrase, Mr Martiniuk? — inexigible. You can have all the judgements in the world, but there's no way of collecting compensation.

What happens is all the same small business people are tarred by the same brush. The word soon spreads: "Don't hire Jack Brown Asphalt Co, because it's closely held, it's not part of a big corporate network and I got burned by another — not the same one, but by another — independently owned and operated business operator."

I'm wondering what kind of solution there is in that regard, because if it's instituted, the small business community should be vitally interested in making sure that small business people, owner-operator type of business people, aren't tarred by that brush of the scoundrels who then become — they set up a new numbered corporation. You know the scams.

Mr Wall: That's really the purpose of the Better Business Bureau, that we go through certain criteria before they become a member in good standing. When people phone our inquiry line they can get a report of any company that has had any disputes and if they've resolved those disputes. If they fail to resolve a dispute on a written complaint, they don't get a good reporting and therefore the consumer at least has that window of knowledge not to deal with them.

Mr R. Gary Stewart (Peterborough): Thank you, sir, for your presentation. A comment you made was that consumer's rights must not be compromised, and I'm the first one to agree with you. Because this is a very small bill that deals mainly with services, and others deal with goods, do you or does your organization feel there should

be anything added to this to make sure that the consumer's rights are not compromised?

Mr Wall: The only position the Better Business Bureau would deal with is as long as there is complete and utmost disclosure. I think everybody should have the choice as to whether they want the option. If the thing is controlled and their options are clearly defined, that's really what we're here for, to tell this committee that there are many ways of having different options of billing. As long as everybody has the choice to decide yes or no on a timely basis, that's what we're really looking for.

Mr Stewart: Do you feel this goes far enough?

Mr Wall: From my own position, being self-employed, I'm in big favour of self-regulating business. I think the bill is one that takes positive steps to regulating certain industries that have a monopoly on the services provided and it's one good step forward.

Mrs Ross: Mr Wall, how long have you been involved with the Better Business Bureau?

Mr Wall: I've been chair for over two years now.

Mrs Ross: Would you have any indication as to whether the complaints against negative option marketing have been increasing, or any feel for what's happening out there?

Mr Wall: I may be able to give you that information, if I could defer to my president. Do you have any knowledge of that?

Mr Peter Lalonde: It's fairly consistent.

Mr Wall: It hasn't increased but it's still present, it's still very prevalent in our inquiries.

Mrs Ross: Would you agree that because of the changing technology and the way people buy goods and services now — and I think you've referred to it in your comments, that people buy services through different means now — there needs to be some flexibility in the legislation to allow for that to happen?

Mr Wall: From our focus as self-employed business people — and we represent mostly small business — I think as long as the practices are ethical and reasonable and clearly define the choice to our consumers, that's really what we want to be doing, versus having a forced option and having to react to an additional billing, is where we're coming from.

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Mrs Ross: You also made a comment that you thought that purchasers needed to be accountable for their failure to take action. Did I hear you correctly?

Mr Wall: No, that meant that they were accountable because they didn't act. In the cable situation that's what we meant, that they were forced to accept a higher price for the service with a few additional channels in order to keep their own channels. That's where we came from in that comment, versus if they had a choice to have additional channels at an additional price, which probably would have been a better way to operate.

Mrs Ross: So had they been given a choice, then you would have agreed with what the cable companies were attempting to do.

Mr Wall: That's right. Whenever anyone makes a purchase of a service or a good, as long as they're fully cognizant of their choices and what they are getting for their price, I think that's what the consumer really ultimately wants.

Mrs Ross: Do you agree that sometimes there are instances where a consumer may agree — maybe not agree but accept a good or a service but not mean for it to be a long-term contract? Just the acceptance of something doesn't mean that I agree to contract —

Mr Wall: Yes, I would assume there are some such situations. The one instance that I bring up is the banks. When people are having their GICs come up to maturity date, if they don't react but they're given good notice, 30 days' notice, they can either change the term of their GIC or they can renew at the rate without any actual application going back to the bank for signature. They're given the choice.

Mr Crozier: Thank you for coming today, Mr Wall, on pretty short notice actually. I appreciate your support of this bill, at least the intent of the bill.

There are a couple of words you've used that I would like you to comment on. You used the word "choice" a couple of times in your presentation. Really, isn't that what negative option marketing is all about, not providing choice to the consumer?

Mr Wall: Absolutely.

Mr Crozier: Therefore, if in a free market we can provide that kind of choice — and I was going to say in an unregulated market, but even in a regulated market there should be or may be some option for choice if the product is presented to the consumer in the right way.

Mr Wall: Absolutely. I agree with you there.

Mr Crozier: The other one is "ethical." I agree with you and I wanted to comment that my amendments to the Consumer Protection Act with regard to services would not be necessary if everybody, every business which provided a good or service or credit operated in an ethical way, because I assume there would no need to have the act in the first place. I just wanted to emphasize that the reason I feel the act should be amended in the area of services is not to restrict in any way the ethical operator, it is not in fact even aimed at the ethical marketer, but it's often those areas that we, either in our own minds or in the mind of the public in general, feel are unethical.

It was good of you to bring that point forward. Provided a consumer is fully informed and is treated in an ethical way, I suggest the act wouldn't be necessary. But it's in those instances where there are unethical practices that you then have to open the act up and use it.

Mr Wall: Absolutely. From the position of a consumer, which I am, and also as chairman of the Better Business Bureau, as long as I am treated fairly and all my choices are clearly explained, it's up to me to make those choices.

Mr Crozier: Or I might say, and you may or may not agree, that if every business operated ethically, fully informed their customers and treated them absolutely fairly, then the Better Business Bureau would be pleased and

would not even be necessary if that were the case, in the pure world.

Mr Wall: Absolutely. That's in the true hypothetical world.

Mr Crozier: You're like the dentist; you'd like to work your way out of business. Thanks very much for appearing today.

Mr Wall: You're welcome.

The Chair: Thank you very much for coming forward today.

CANADIAN CABLE TELEVISION ASSOCIATION — ONTARIO REGION

The Chair: We would now ask representatives of the Canadian Cable Television Association to come forward. In the event you did not hear earlier or were not here earlier on, just so you know, you have 20 minutes for your presentation. After your presentation the time is divided equally between the three caucuses.

Mr Roy O'Brien: Good afternoon, members of the standing committee on the administration of justice. My name is Roy O'Brien. It is a pleasure for me and my cable industry colleagues to be here today to provide you with our views on Bill 83. As we all know, this bill contains proposed amendments to the Ontario Consumer Protection Act.

Before I get started, I would like to present to you the members of our panel, all of whom are executives in the cable industry in Ontario. Pamela Dinsmore is vice-president, regulatory, at Rogers Cablesystems Ltd. Ken Stein is senior vice-president, corporate and regulatory affairs, at Shaw Communications Inc. Kenneth Engelhart is vice-president, regulatory law, at Rogers Communications Inc. We are here today to present the views of the Canadian Cable Television Association - Ontario Region on Bill 83, which would prohibit negative option marketing in Ontario.

At the outset, we wish to make it clear that the Ontario cable industry is united in its resolve that consumers should be free to choose for themselves which packages of entertainment and information services they receive in their homes. The Ontario cable industry is committed to respect consumers' freedom to choose and is also committed to ensure, to the fullest extent possible, that new programming services are offered to cable customers exclusively on a positive option basis. Two years ago, customers reacted with their pocketbooks to negative option marketing and we listened. Today, instead of these practices, we are employing positive option methods to sell cable packages.

Consumers across Ontario are aware of our positive option marketing efforts and they are working. This is because this fall cable companies introduced as many as 16 new cable channels to our customers. These new channels are being offered for free for up to three months to customers in most Ontario cable systems. We have made it clear to our customers, through billing inserts, direct mailings and television advertisements, that they must take

positive action to continue receiving the new channels once the free preview period ends.

Customers who inform us that they want to keep the new channels will continue to receive them and will be billed for them thereafter. For those customers who do not inform us that they want to continue receiving the new tier and pay for it, we will not supply the service.

We will do everything we can to sell our customers on the merits and value of the new tier. That is an integral part of our business. We will not, however, at any time charge our customers for services they do not want.

Our customers have responded well to positive option marketing. We have had no complaints from customers about the methods used to market the new tier. On the contrary, our customers to date seem very pleased with the new cable channels that are now available to them. Many have opted already to sign up for the new tier and we look forward to a high take rate.

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Turning to Bill 83, we wish to repeat our position that consumers should be able to choose new packages of services on a positive option basis. We are very concerned, however, that the bill, if passed as drafted, would go further. It would freeze in time our existing cable packages. This is because the bill's provisions, once enacted, would require any given cable company to positive-option its entire Ontario customer base in conjunction with any change, however minor, to the existing cable packages its customers already receive. This would be unworkable.

The kinds of minor changes we are referring to might include substituting one cable channel for another within a cable package or adding a service to or removing a service from a cable package. For example, a programming service in an existing tier may go bankrupt, lose its licence or prove to be tremendously unpopular with our customers, and as a result we may need to make minor changes to our existing tiers. Under current CRTC-approved industry standards, cable companies are required to provide customers with 30 days' written notice of these kinds of changes. With the proposed amendments, in addition to providing 30 days' notice, we would have to positive-option each of our existing customers regarding the change. The cost and time of obtaining these three million separate approvals would drive the price of our cable packages through the roof and hobble our ability to respond quickly to changing dynamics in the marketplace. Some customers simply cannot be reached and we could not therefore charge them for their cable package.

Whether driven by regulatory fiat, customer preferences or competitive pressures, the cable industry needs the flexibility to add, remove or substitute services in our existing packages without collecting three million signatures.

The ultimate protection for the customer is competition. We now operate in a competitive environment. The direct-to-home satellites have launched their service and other wireless cable distributors are licensed and will soon be operating in our backyards. Consumers now have choice. Our competitors are just waiting for us to make mistakes.

We cannot afford to engage in behaviour that would upset our subscribers.

We want workable legislation. In our view, freezing our existing cable packages goes well beyond the bill's stated purpose of protecting Ontario consumers from negative option billing in the provision of services.

Since the member's bill was first introduced last year, representatives of the cable industry in Ontario have worked with staff at the Ministry of Consumer and Commercial Relations to address this matter. We appreciate the opportunity to present our views on the bill to the standing committee and are prepared to respond to any questions you may have. The concerns we have raised are important, complex and highly technical. Any attempts to address them, should the committee choose to do so, must be given the requisite time to ensure the needs of all stakeholders are met.

The Chair: Thank you very much. That allows us approximately four minutes per caucus and we begin with the government side.

Mr Stewart: Thank you for your presentation. I have a wee bit of concern. Being in municipal politics for a number of years, we had to deal with what we called minor variances. When I read your submission and I look at one of the lines, it says, "We may need to make minor changes to our existing tiers." That word worries me. The fact is that your interpretation of "minor" may not be the interpretation by the consumer. As I read on, it suggested that you may not be able to get a hold of people etc, but you must be able to because you bill them.

I guess two questions: The word "minor" worries me, and the other one is you're suggesting that people can't be reached to give notice of these changes and yet I suggest that you bill them on a monthly basis, or however you do it. Surely that is contact with people. I know you're not in the giveaway business, you folks, so I'm quite sure you bill people on a regular basis. Could you just make comment on those two issues.

Mr Kenneth Engelhart: Your question about what is minor is of course to some extent in the eye of the beholder. But as the introductory remarks mentioned, we might have a situation where, say, there's a very attractive service that comes along and everybody wants to watch it and we add it to one of our packages without raising rates. Maybe the customer says: "This is a service I didn't ask for. I didn't ask for this new channel, and you haven't raised my rates, but some part of what I'm paying every month must be for that channel, so I'm being billed for services I didn't ask for." A strict reading of the legislation I suggest could lead to that conclusion. Maybe there's a service that's just very unpopular, nobody much likes it any more and we can substitute for it another service that's very popular, that would make the package more attractive. Those are examples of the kinds of changes we might want to make that I think would be prohibited by the legislation.

Dealing with your second point, we certainly can contact the people and we do send them bills, although a lot of

our customers are on pre-authorized chequing or pay by credit card, as the honourable member mentioned before.

I think you know that when you send cards to your constituency members asking them for their views, you don't tend to get a huge positive response. When we call people up —

Mr Stewart: With our government we do, sir. I couldn't let that pass.

Mr Engelhart: I'm sure the ones who respond are very positive.

What I was trying to say was when we call people up and when we send them cards, because we do this, for example, with the launch of the new tier, there's about a quarter of the people we just can't reach. We phone them, we send them cards, but we never do get a yes or no out of them. Under positive option marketing we take that as a no. There are about 25% of our customers who, yes, pay their bill faithfully but you cannot get a word from them. I think that's consistent with what other service industries find as well.

Mr Stewart: The clarification, though, on "minor" is the one that concerns me. I'm concerned about many of the seniors who may not totally understand the situation as they get older and so on and so forth. They have got the system because they like a number of programs and all of a sudden they're gone. I don't know how you operate, but if they decide within a week or two after that they don't want your service any more, are they billed until the date that they cancel or are they billed from the date prior to when the change was made?

Mr Engelhart: If someone calls up and says, "I wasn't aware that such-and-such happened and I'm not happy about it," we will always give a refund back to that date.

I understand your concern and I can tell you that it's our subscribers' concern as well. People don't like changes with their television, and when we do make a change we do so with great caution and deliberation. At the same time, when I look at this proposed amendment as it's currently worded, it freezes all of our packages in time exactly as they are today and that concerns me a bit too.

Mr Crozier: Anyone can answer this, but let me pick someone. Mr Stein, are there any circumstances under which the cable industry would prefer to have negative option marketing?

Mr Ken Stein: I would say at this point, no, there are no circumstances. We would prefer to offer services through positive option marketing. That would be our preference. Our concern is how one defines negative option marketing and what kinds of situations does that cover, what kinds of changes we can make in the packages we offer to our current subscribers and the ability we would have to make changes.

But in terms of our position on negative option marketing itself, we agree that what has happened over the last number of years has led to a negative connotation on the part of consumers. As we did with the last tier, the new tier of services that we just launched on a national basis, we would want to do that on a positive option basis.

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Mr Crozier: So when the example is given that you have to change a channel because someone goes bankrupt or for whatever reason, you buy another cable service and they don't provide those specific channels. So you don't consider any change in my service, because I happen to have Shaw cable in Leamington, as being a negative option if in fact I don't have any choice in it?

Mr Stein: What we want to be in a position to do to benefit our customers would be to be able to continue to make changes in our package of services. We don't define that as negative option marketing. I think that's the crux of the matter: How does one define that? We believe that with individuals who signed up for basic cable service, we have to be in a position to continue to be competitive. To be able to meet our customers' needs, we may have to make changes in those services. In terms of adding those services on, that can sometimes lead to changes in the package that customer receives. We believe that in order to make the system work, we have to be in a position to do that.

Mr Crozier: Mr Engelhart, were you vice-president of Rogers two years ago when we had the high-profile issue?

Mr Engelhart: Yes.

Mr Crozier: What led Rogers to market that way at that time?

Mr Engelhart: I think the concern at that time was that we had six new Canadian services coming on board and in those days the perception at the CRTC was very much that we had to ensure the financial viability of these new services. There was a sense — there was more than a sense, there was an understanding that we would help them financially to the extent that we were being pressured to enter into what was called "make whole contracts" with the new services, so that those services would get paid for 100% of the eyeballs, no matter how many people signed up. There was an enormous financial and regulatory pressure on us to get a very high penetration for those services. That is really what led to the negative option marketing.

I am not trying to in any way make excuses for or justify it or say that it was the right thing to do — it was not the right thing to do — but I'm just explaining to you what the motivation was that led to that decision.

Mr Crozier: I appreciate that. Thank you.

Mr Kormos: Basically, I like the new package, but why we down in Niagara got a 24-hour golf program and we don't get the food program rots my socks. I still never see Two Fat Ladies, but everybody's talking about them in Toronto. So there you go.

You talk about competition. I of course am a 1950s person. I literally grew up with television. I have been fascinated because it's undergone that remarkable evolution. It's changed dramatically in philosophy. I recall the early 1950s projections about the amazing concept of free airwaves in broadcasting, no ownership of airwaves. That concept has been retired, very much so.

As you might have heard me say earlier, I have some serious qualms about what the ownership of cable does in

terms of the original and historical concepts of broadcasting. I suggest to you that the real competition is going to be in quality of signal, when you talk about these satellite dishes. Let's face it, people don't use an antenna any more, which provides a very good quality signal. The strange thing is that the people who most need access are living in parts of the province and the country that don't have cable. The people who receive the fewest number of broadcast signals and who most need cable are the ones who are going to be last to get it, if ever, because of their remote nature and the small communities and the huge cost of servicing them.

The whole nature of how people watch television: The reason I don't have a rotating antenna is because I can't surf. I'd have to have one hand on the rotor control, changing the direction of my antenna, and the other hand on the — the way we watch television has just changed too dramatically. The other thing is, I suspect that if you took a look at the stock of television receivers in the province or the country, it's at a fairly high level because of the relatively low cost of television sets. That makes quality of signal, in my view, all the more important.

I know down where I come from it's not Rogers any more. It used to be something before Rogers and now it's Cogeco. They fired some of their best people and they're using a call centre now to field inquiries in Ontario, so when you call the call centre, they don't know who you are, they don't know what neighbourhood you're calling from. That's the thing that is really ticking people off. I know that none of you folks are from Cogeco, but that's what's really ticking people off down in Niagara, along with the increasing fees. I know all the propaganda about the fibre optics, the new installations. It's hasn't substantially improved the quality of the signal.

Once we move into the high-definition television, you bet your boots people are going to be investing in satellite dishes rather than cable, if cable can't upgrade the quality of its signal to match that which I'm told is available from satellite. I'm not sure that you're taking a very rigid interpretation of the legislation when you talk about what it does. I'm quite frankly not unsympathetic to your argument about how this might imply that changing, let's say, getting rid of that stupid golf channel and putting in a food channel down in Niagara, how that might be considered — I don't see how it could be considered a negative option. I agree that it shouldn't be. I'm sure we're going to ask counsel to address it.

Bell Telephone: As you know, now it's been determined clearly that their rights end at the entry point into the house, right? Once you've got that Bell Telephone hookup you can run as much wire as you want and install as many phones. What's the position of cable in Ontario in that regard?

Ms Pamela Dinsmore: That's a very timely question because the whole matter of inside wiring is currently being examined by the CRTC. They are about to issue new regulations and in those regulations, as currently proposed, they have proposed that should a subscriber call to terminate cable service, the cable companies have to

offer to the customer the inside wiring for sale, and they've set a price. Those regulations may or may not change because there has been some discussion of that since then.

Mr Kormos: Is the consumer entitled to install his or her own wire cable inside the home, with its own jacks?

Ms Dinsmore: Once the customer owns the wire, at that point the cable company would no longer own the wire and I'm sure the customer could do whatever he pleased with the wire.

Mr Kormos: God bless. What a wonderful proposition.

The Chair: Thank you very much for coming forward with your presentation today. We really appreciate it.

Mr Crozier: Chair, I wonder if I could make a few comments.

The Chair: Yes you may, but before we get to that, I'd just like the indulgence to find out from the committee: We have another presenter who has asked to present today. Is it the agreement of the committee to allow the Family Channel to come to present today? Agreed? Okay.

Mr Crozier, you had comments first?

Mr Crozier: I can reserve them until after this. It was just some comments to kind of wrap up the day. It may provide some information for the committee as to what direction we might go.

1640

FAMILY CHANNEL

The Chair: I ask the Family Channel presenter to come forward. I believe you heard earlier on that you have 20 minutes for presentation time. Any time remaining is divided equally between the three caucuses.

Mr Len Cochrane: Thank you, Chair. As you can see, I'm not as well dressed as the cable guy and I apologize. I only found out about this this morning.

My name is Len Cochrane. I'm the president and chief operating officer of the Family Channel. As I just stated, I learned today of the private member's bill proposed by the honourable Mr Crozier, the member for Essex South, regarding this negative option. I guess, and I think I speak on behalf of a lot of my colleagues, that I would really like some time because of the fact I got a very fuzzy copy today.

As a member of the premium specialty association and as a board member, I would like to be able to bring this to my board and be able to discuss the implications this has. I agree with my colleagues that being part of the new 16-channel package and also being the managing partner of Teletoon, we have seen a definite positive option marketing campaign that's been second to none. I'm sure you all watch TV occasionally. You've seen ads. You've seen print advertising that is asking customers and telling customers to watch the preview and asking for the order. I think this is the wave of the future.

I think with the advent of DTH, the one shelf, Look TV in southern Ontario, the licensing of CellularVision, all of these are going to mean incredible competition for the

incumbent, and that in itself has a wonderful, remarkable ability to self-police. I don't think that we, the Family Channel, are saying we agree that negative option is something that we want to keep. What really scares us on the first blush of reading the bill is that there is something of great concern to myself and I'm sure that when I show it to my colleagues in our association they'll have great concern.

One of the wonderful things we have here is a great Canadian industry and we are up against a huge giant from the south. Being a Canadian by choice, I think the ability to deliver what we've delivered in the broadcast industry, being next to this giant in the United States, is unbelievable to us and the rest of this world. I want to make sure we can continue to do so.

Thank you. I'd certainly be pleased to answer any questions.

The Chair: Thank you very much. You leave just between five and six minutes for each caucus. We begin with the official opposition.

Mr Crozier: Thank you, sir. I appreciate the fact that you had not only a little time, you had barely any time to review this. All I would like to say is, and you've made this request — in fact, you've made it in writing. You've said that you recommend the committee take more time to consider the serious implications of this new legislation. It's amazing to me how 13 words in a bill can be so serious, but I understand they can be. Certainly the remarks that I have to the Chair towards the conclusion of this meeting, if the government and everyone will agree, very well might address your concerns. So I understand what you're asking for.

Mr Cochrane: Thank you.

Mr Kormos: I appreciate you coming by on short notice and simply giving notice that there's more you might want to say, but don't you find those little logos on the lower right-hand portion of the screen to be really irritating?

Mr Cochrane: Did you call my office?

Mr Kormos: Not yet, but they are really irritating. I don't mind if it's some old fluff movie. Honest, once in a while to know what station you're watching, God bless, but they really bug me and I think they bug a whole lot of other people. Why do you guys put them on?

Mr Cochrane: We've never done that before, but one of the things we were able to negotiate with the cable industry was to be able to move from a very small base and part of a premium television package to be part of these new 16 channels. We felt that because before we were only in 7% of English cable homes and we're going to be in 95% during the three-month preview, people had to be able to find us.

One of the things I did was use a translucent logo. It's black and white, you can see through it. I can certainly understand a number of people being upset. Particularly our current subscribers are saying, "Why do we have to see that?" I think what will happen is that once the three-month preview is over, you will see them smaller and you will see them less often. I can only speak for ourselves.

We're trying to build a brand and it's very important in that 16 weeks. When people tune in and surf, we want them to know what we have. If you look at ours, it's translucent and much smaller than some of the others, but I can certainly understand your concern.

Mr Kormos: You're not alone, and the argument is good in view of the context of 16 weeks.

The other thing: I don't know whether Family does this; I know a whole bunch of others do it. They do it both with movies and with their TV series broadcasting. During the credits or even during the final scenes, they'll compact it and then have advertising down the right-hand side or somebody announcing the next program or what's next on the network. Once again, I think people really don't like that. The other thing is there are actually some broadcasters who kill the credits on a movie, and I think that's a real injustice to the people in the movie. Family doesn't do that, do they?

Mr Cochrane: Family Channel doesn't squeeze. If you watch it, you will find that it's mostly over the network that has the ability. It's called an expander, and it can actually move the picture up or down. They use this expander to crush it and add in.

Mr Kormos: Which means you can't read any of it.

Mr Cochrane: Specialty channels, because they work in a different format from over the broadcast, have never seen the need to do that. Certainly in the premium side of the business, we would never cut short the credits.

Mr Kormos: You agree with me that's very irritating and irresponsible?

Mr Cochrane: As a consumer, personally, I don't like it, but I think it's one way to keep things moving. You'd have to ask people like ONTV and Global.

Mr Kormos: They're around. Thank you kindly.

Mrs Ross: Thank you very much, Mr Cochrane. You mentioned that you were a member of the premium specialty association. What exactly is that?

Mr Cochrane: It's called SPTV.

Mrs Ross: I'm sorry?

Mr Cochrane: It's the other way around; it's the Specialty and Premium Television Association.

Mrs Ross: What exactly is that?

Mr Cochrane: I guess it would be very similar to the CCTA, the fact that the cable companies have banded together as an association. The specialty and premium channels have banded together and formed an association.

Mrs Ross: The only way I could get the Family Channel would be through a package from the larger cable companies, is that true?

Mr Cochrane: Today, yes. We're part of the third tier which is being introduced as we speak. Before, you could buy it individually on an à la carte basis. Prior to October 17, it would have cost you \$9.95 for our channel. It would also cost you \$7.95 to rent the decoder box. As a premium channel, we had to be scrambled. So in total you are talking about \$18. Today, in this tier, it's \$5.99 for Family Channel, plus you get 15 channels free.

Mrs Ross: So this is a good move then?

Mr Cochrane: It's an excellent move for us and the consumer.

Mrs Ross: You referred to some terminology. I obviously don't watch enough television, but you mentioned Look TV, CellularVision and a couple of other things. Can you just tell me what exactly these are?

Mr Cochrane: Five years ago we certainly all knew that cable was a monopoly of the delivery of television entertainment. In the summer, Star Choice started operating a direct-to-home 24-inch dish, and I'm sure you've seen it. ExpressVu started on September 8. So there are now two competitive direct-to-home satellites in the air. Look TV was licensed, and I think it was early summer or mid-summer, by the CRTC. It is using a wireless cable technology called digital MMDS. The infrastructure for that is being built today and will be up and running next summer. CellularVision is a similar type of technology, but instead of a direct thing it uses a number of cellular points similar to cellular telephones. They actually take the signal and keep transporting it around. It's a very similar digital MMDS-type technology, just a different mode of transportation. That's also being licensed by the CRTC for southern Ontario.

1650

Mrs Ross: Would you agree that consumers are currently protected under the Consumer Protection Act with respect to goods? Would you agree that they require some protection when they purchase services?

Mr Cochrane: Yes. What I heard my — I like to call them my cable partners, because anybody who is in business to distribute our programming is a partner, whether it be MMDS, DTH or cable — I think I heard the cable guys say they're also in agreement; it's just that there are some technicalities in the bill that scare us as broadcasters and the industry. We want to have the flexibility to be able to deliver the programming. I don't think we or the cable industry are saying no to banning negative optioning. I think we want to ban it in the true sense of the word.

Mrs Ross: I think actually your discussion there on wireless technology and the way technology is moving is a good reason we need to ensure there is some flexibility built into the Consumer Protection Act. Thank you very much for your presentation. I appreciate it.

The Chair: Mr Cochrane, on behalf of my sons, Josh and Garrett, myself and the committee here, we appreciate your coming forward on such short notice.

I believe Mr Crozier has the floor.

Mr Crozier: I just want to make a couple of observations and then make, I guess, an offer. We've centred to a great extent on the cable industry today, but I think it has been brought up by the government members that there is a whole broad range of services out there that I feel the act doesn't cover. It might surprise some to know that it was not the cable industry that led me to bring this amendment to the Consumer Protection Act. The industry I was aiming at hasn't shown a lot of interest; I don't know why.

In any event, there is this broad-based service industry that I think needs to be looked at. From every indication I've had from the minister, the government side and min-

istry personnel, we all feel that way. I want to say at the outset that the cooperation I've received from Minister Tsubouchi and the ministry on this — because, as I said, it was only 13 little words to begin with, but it obviously has led to a much broader discussion, which I agree may not yet be concluded.

Having said that, I certainly don't want to see my bill or any bill, for that matter, diluted to the point that it's ineffective. I wouldn't want to allow that just to say that I had a private member's bill passed, because that isn't the objective of this. The basic concern of all of us, and it has been shown all along, is that the consumer is our primary interest and we want the best bill possible. I just hope it happens to be this bill.

It has been suggested to me by various people — and I don't like to negotiate, nor do I like to move one inch from the negotiating table without the other side concurring — but I have been led to believe that every effort will be made to carry this bill over on the order paper if the government prorogues. With that best assurance as can be given, I certainly would concur with those who have appeared and others who have written us that perhaps more time should be taken to draft the appropriate amendments, because I don't think there's ever a bill that comes before us that doesn't need to be amended. I agreed to this at the outset. I merely agreed that the ministry had more resources than I have in my office. Paul and Susan and I, none of who are lawyers, appreciated the resources of the ministry, and I understand those amendments and discussions are not yet concluded.

Having said that, and knowing that all parties are interested in this and in fact it seems that everyone supports its intent, I don't know what I've just bargained to do, because it really is up to the government to do whatever they want with this bill. But it would not be my intent to feel in any way mistreated as a private member by having this bill go to a conclusion that is satisfactory to, bottom line, the consumers of the province of Ontario but meets the real intent of the bill.

Mrs Ross: We are supportive, as Mr Crozier said, and have been working with Mr Crozier to try to bring forward some amendments. But he's absolutely right, the 13 words have created — it's quite amazing, actually, what transpired out of this bill.

Mr Crozier: Look at "I love you," which got me into trouble.

Mrs Ross: We agree with the intent and spirit of the bill but we want to ensure that the consumer is protected and we just want to make sure we can put forward the best bill we possibly can and strengthen and clarify the purpose of the bill. It's our intention to work with Mr Crozier to continue on this process, but of course it is the House leaders and we'll work with the House leader to see if we can carry it forward.

Mr Kormos: I think I have a sense of the government's problem with the bill. For some strange reason I'm not as concerned about that portion of it as the government is. I think there are problems being created here where there aren't problems.

What I would appreciate, and I've got the background note which I presume comes from the ministry, is a little more elaboration on that. I hear what you're saying and I see what the background note says. I don't think there's a problem there where you say there is a problem. I'd appreciate, quite frankly, a little more elaborate or detailed explanation of where you, the ministry, perceive there to be problems and some more specific illustrations of how that would impact in a way that was never intended, let's say, if it were to pass as is. I just don't see the problem. I'm trying to look at it very objectively. I don't see the problem. You could persuade me of it but it's going to take more than the background note that we've got. I don't say the background note's in any way deficient, but I'd like to see that fleshed out a little bit and some specific illustrations.

Mrs Ross: Okay, specific illustrations: The Consumer Protection Act currently looks at goods and services that are not deemed to have been given by virtue of, for example, the passing of time. It doesn't look at the payment of a good or service, as an example, which we think it should. It doesn't look at a similar good. For example, the cable companies have said clearly that oftentimes there are instances where one of the channels may have gone bankrupt or something and a subscriber subscribed to that. They have to supply something to replace that. It doesn't address those types of changes, so you can't just say a "minor change," because a minor change to a lot of people can mean different things. You have to clarify exactly what that is.

Mr Kormos: Hearing what you said and not wanting to engage in debate now — perhaps it's premature — it reflects some of what the cable people said. Negative billing, in my view, would have to constitute either an increase in billing, that is to say a new billing, or a substantial — and I don't know the numbers, but out of a package of 16, what you're suggesting is that if one program out of a package of 16 were deleted yet the price were to remain the same, that would be deemed some sort of negative billing because it would be regarded as a substantial change. I hear the argument but I don't think so. Mr Stewart mentioned it as well. I don't think so.

1700

What the consumer is concerned about — the consumers can understand. The stupid golf channel might be replaced by the food channel down in Niagara and that would be a wonderful thing, except for golfers, I suppose. I don't think you're going to see consumer arguments. I don't think you're going to see consumers feeling themselves to be ripped off or scammed. If at the end of the day they don't like that package, they'll call up and say, "You've altered the package to the point where it's not my cup of tea." But obviously to have acquired the package in the first place, it had to have been by some means other than negative option.

That's the nice thing about the marketing system over the last three months — very aggressive, very slick, very clever, especially to kids, I suppose. The kids really bit on to it, and if any parent doesn't buy the programming like

the science channel and stuff, they're dog meat come the morning of January 1. Very clever, but that's clearly the opposite of negative optioning, and we're not talking about substituting one channel for another within the package. Clearly the people who got that package bought it in a positive choice, so that's where you and I part company on that argument.

Mrs Ross: But do you not think there's perhaps a responsibility to ensure that, for example, there's full disclosure of the terms and conditions under which services can be provided to consumers and that there should be some allowance made for that here?

Mr Kormos: Sure. As I say, any number of things could happen. Somehow we are fixated with cable here, but I suppose it's as good an illustration as any. If for some reason I become horribly unhappy with the quality of my cable, at some point I'm going to say, "You guys are out of luck when it comes to this household." I'm going to call up and cancel.

The reduction in quality I don't see as a negative optioning phenomenon. I'm using that as an example because it's the only one I can think of. Or if they delete one or two programs out of a package of programs, yes, I'm going to say, "Sorry, I don't want this any more because it's not what I want."

I'm as inclined to carelessness as a consumer as anybody can be. I understand that. I don't think I'm any type of special consumer with regard to products like that. I personally don't see that as the imposition of negative optioning. You're saying and the cable industry is saying that it could be interpreted as negative optioning. I don't agree. But if that's the only issue, if it's only in the area of cable, if that's the only industry, good or service that could be contemplated to be involved, then design something specifically to deal with it.

I don't know how Mr Crozier feels about that. If the provision of cable TV is the only good or service in which we can anticipate that —

Mrs Ross: Mr Kormos, I think what we're getting involved in here is what could be a clause-by-clause discussion.

Mr Kormos: Quite right.

Mrs Ross: Yes, and I really think that should be left to a later date. I think this underscores the need to really look at the bill to make sure it is doing exactly what we want it to do, which is to protect the consumer when it comes to buying services. I very much support recommending that we put this over to the spring so we can have a really full discussion on this issue.

Mr Crozier: Just one short comment: Again, I appreciate the fact that the government member said they want to cooperate and we'll discuss this further. I just point out that I think time is of the essence, because this bill, at least the question of negative option marketing, has been before us for a year. It did receive, as is often referred to, a private members' business unanimous consent, and I suspect there were at least 20 of us there to give that unanimous consent. Now that it's back on the table, I'd appreciate it if we could move along at a reasonable pace towards solving this, that's all.

Mrs Ross: I agree with you and I will work with that, and I hope you'll work with me to support my private member's bill.

Mr Crozier: Absolutely.

Mr Kormos: I hope you're still the parliamentary assistant in the spring.

Mrs Ross: So do I.

The Chair: I believe that concludes the discussion. I'll call the hearings to a close for today. Thank you all, members.

The committee adjourned at 1706.

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